

The Honorable Ronald B.
Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CHERYL KATER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CHURCHILL DOWNS
INCORPORATED, a Kentucky
corporation,

Defendant.

Case No.: 15-cv-00612-RBL

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT –
CLASS ACTION**

JURY DEMAND

1 Defendant Churchill Downs Incorporated (“CDI”) hereby answers the Complaint – Class
 2 Action (“Complaint”) filed in this action by Plaintiff Cheryl Kater (“Plaintiff”) on April 17, 2015,
 3 and provides separate and affirmative defenses to the allegations in the Complaint. Unless
 4 specifically admitted, CDI denies all allegations and claims contained in the Complaint.

5 1. In response to the allegations in Paragraph 1, CDI admits that, at the time the
 6 Complaint was filed, Big Fish Games, Inc. was a wholly owned subsidiary of CDI, and that Big
 7 Fish Games, Inc. owns and operates Big Fish Casino, an online gaming and social entertainment
 8 platform. CDI denies that it ever directly owned or operated Big Fish Casino. Except as expressly
 9 stated, CDI denies the remaining allegations in Paragraph 1.

10 2. In response to the allegations in Paragraph 2, CDI admits that roulette, blackjack,
 11 and slots games are available to play for free on the Big Fish Casino platform, and that Big Fish
 12 Casino games may be played via the Big Fish Casino website and the Big Fish Casino mobile app.
 13 Except as expressly stated, CDI denies the remaining allegations in Paragraph 2.

14 3. In response to the allegations in Paragraph 3, CDI admits that free virtual chips are
 15 provided to Big Fish Casino users at certain times, including when users first play a game on the
 16 Big Fish Casino platform. Except as expressly stated, CDI denies the remaining allegations in
 17 Paragraph 3.

18 4. CDI denies the allegations in Paragraph 4.

19 5. CDI denies the allegations in Paragraph 5.

20 6. Paragraph 6 and its accompanying footnote contain legal conclusions and not
 21 allegations of fact, and therefore no response is required. To the extent a response is required, CDI
 22 admits that Plaintiff purports to bring claims under Washington law, and that Big Fish Casino
 23 users are subject to the Big Fish Games Terms of Use, including the mandatory arbitration and
 24 governing law provisions therein. CDI denies that it violated Washington law, denies that it may
 25 be held liable for any conduct related to Big Fish Casino, denies that it “illegally profited” in any
 26 way, denies that Plaintiff was harmed as a result of any alleged conduct by CDI, denies that the
 27 claims alleged in the Complaint may be asserted on behalf of the putative class, and denies that

1 Plaintiff is entitled to any relief from CDI. Except as expressly stated, CDI denies the remaining
2 allegations in Paragraph 6.

3 7. CDI is without sufficient knowledge or information to form a belief as to the truth of
4 the allegations in Paragraph 7 and, therefore, denies the allegations.

5 8. CDI admits that it is a corporation incorporated under the laws of the
6 Commonwealth of Kentucky, that Big Fish Games, Inc. has a principal place of business at 333
7 Elliott Avenue West, Suite 200, Seattle, Washington 98119, and that Big Fish Games, Inc.
8 conducts business throughout this District, Washington state, and the United States. Except as
9 expressly stated, CDI denies the remaining allegations in Paragraph 8.

10 9. Paragraph 9 contains legal conclusions and not allegations of fact, and therefore no
11 response is required. To the extent a response is required, CDI does not challenge that the
12 requirements of 28 U.S.C. § 1332(d)(2) are satisfied for purposes of this action only. Except as
13 expressly stated, CDI denies the remaining allegations in Paragraph 9.

14 10. Paragraph 10 contains legal conclusions and not allegations of fact, and therefore no
15 response is required. To the extent a response is required, CDI admits that Big Fish Games, Inc.
16 conducts business in the State of Washington and states that CDI does not challenge personal
17 jurisdiction with respect to Plaintiff's individual claims for purposes of this action only. Except as
18 expressly stated, CDI denies the remaining allegations in Paragraph 10.

19 11. Paragraph 11 contains legal conclusions and not allegations of fact, and therefore no
20 response is required. To the extent a response is required, CDI states that it does not challenge
21 venue for purposes of this action only. Except as expressly stated, CDI denies the remaining
22 allegations in Paragraph 11.

23 12. CDI is without sufficient knowledge or information to form a belief as to the truth of
24 the allegations in Paragraph 12 and, therefore, denies those allegations.

25 13. In response to the allegations in Paragraph 13 and its accompanying footnotes that
26 quote from a document, CDI states that the document speaks for itself. CDI admits that CDI owns
27 certain horse racetracks and casinos, and that CDI acquired Big Fish Games, Inc. in or around

1 December 2014. CDI is without sufficient knowledge or information to form a belief as to the
2 truth of the remaining allegations in Paragraph 13 and its accompanying footnotes and, therefore,
3 denies those allegations.

4 14. In response to the allegations in Paragraph 14 and its accompanying footnote that
5 quote from a document, CDI states that the document speaks for itself. CDI is without sufficient
6 knowledge or information to form a belief as to the truth of the allegations in Paragraph 14 and its
7 accompanying footnote that relate to unnamed “developers” and, therefore, denies those
8 allegations. CDI denies the remaining allegations in Paragraph 14 and its accompanying footnote.

9 15. In response to the allegations in Paragraph 15 and its accompanying footnote that
10 quote from a document, CDI states that the document speaks for itself. CDI is without sufficient
11 knowledge or information to form a belief as to the truth of the allegations in Paragraph 15 and its
12 accompanying footnote that relate to unidentified “[g]ames” and, therefore, denies those
13 allegations. CDI denies the remaining allegations in Paragraph 15 and its accompanying footnote.

14 16. In response to the allegations in Paragraph 16 and its accompanying footnote that
15 quote from a document, CDI states that the document speaks for itself. CDI is without sufficient
16 knowledge or information to form a belief as to the truth of the allegations in Paragraph 16 and its
17 accompanying footnote that relate to unnamed “developers” and, therefore, denies those
18 allegations. CDI denies the remaining allegations in Paragraph 16 and its accompanying footnote.

19 17. In response to the allegations in Paragraph 17 and its accompanying footnote that
20 quote from a document, CDI states that the document speaks for itself. CDI is without sufficient
21 knowledge or information to form a belief as to the truth of the allegations in Paragraph 17 and its
22 accompanying footnote that relate to unidentified “games” and “titles,” and to the unspecified
23 “industry,” and, therefore, denies those allegations. CDI denies the remaining allegations in
24 Paragraph 17 and its accompanying footnote.

25 18. In response to the allegations in Paragraph 18 and its accompanying footnote that
26 quote from a document, CDI states that the document speaks for itself. CDI is without sufficient
27 knowledge or information to form a belief as to the truth of the allegations in Paragraph 18 and its

1 accompanying footnote that related to unidentified “games” and, therefore, denies those
2 allegations. CDI denies the remaining allegations in Paragraph 18 and its accompanying footnote.

3 19. In response to the allegations in Paragraph 19 and its accompanying footnote that
4 quote from a document, CDI states that the document speaks for itself. CDI is without sufficient
5 knowledge or information to form a belief as to the truth of the allegations in Paragraph 19 and its
6 accompanying footnote that relate to unidentified “games” and, therefore, denies those allegations.
7 CDI denies the remaining allegations in Paragraph 19 and its accompanying footnote.

8 20. In response to the allegations in Paragraph 20 and its accompanying footnote that
9 quote from a document, CDI states that the document speaks for itself. CDI denies that it may be
10 held liable for any conduct related to Big Fish Casino. CDI is without sufficient knowledge or
11 information to form a belief as to the truth of the remaining allegations in Paragraph 20 and its
12 accompanying footnote that relate to unidentified “games” and, therefore, denies those allegations.
13 CDI denies the remaining allegations in Paragraph 20 and its accompanying footnote.

14 21. In response to the allegations in Paragraph 21, CDI admits that the Churchill Downs
15 racetrack opened in 1875, that CDI owns certain horse racetracks and casinos, and that CDI
16 indirectly owns TwinSpires.com. Except as expressly stated, CDI denies the remaining allegations
17 in Paragraph 21.

18 22. In response to the allegations in Paragraph 22 and its accompanying footnotes that
19 quote from a document, CDI states that the document speaks for itself. CDI admits that CDI
20 acquired Big Fish Games, Inc. in or around December 2014, and that during the twelve months
21 ending March 31, 2015, Big Fish Games earned approximately \$358 million in revenue. CDI is
22 without sufficient knowledge or information to form a belief as to the truth of certain of the
23 remaining allegations in Paragraph 22 and its accompanying footnotes and, therefore, denies those
24 allegations. Except as expressly stated, CDI denies the remaining allegations in Paragraph 22 and
25 its accompanying footnotes.

26 23. In response to the allegations in Paragraph 23, CDI admits that users may play Big
27 Fish Casino games via the Big Fish Casino Facebook app, the Big Fish Casino website, and the

1 Big Fish Casino mobile app. Except as expressly stated, CDI denies the remaining allegations in
2 Paragraph 23.

3 24. In response to the allegations in Paragraph 24 that quote from a document, CDI
4 states that the document speaks for itself. Except as expressly stated, CDI denies the remaining
5 allegations in Paragraph 24.

6 25. In response to the allegations in Paragraph 25 and its accompanying footnote that
7 quote from a document, CDI states that the document speaks for itself. Except as expressly stated,
8 CDI denies the remaining allegations in Paragraph 25 and its accompanying footnote.

9 26. In response to the allegations in Paragraph 26, CDI admits that free virtual chips are
10 provided to Big Fish Casino users at certain times, including when users first play a game on the
11 Big Fish Casino platform. Except as expressly stated, CDI denies the remaining allegations in
12 Paragraph 26.

13 27. In response to the allegations in Paragraph 27, CDI admits that the notification
14 illustrated by Figure 1 has appeared and may appear at certain times during Big Fish Casino
15 gameplay. Except as expressly stated, CDI denies the remaining allegations in Paragraph 27.

16 28. In response to the allegations in Paragraph 28, CDI admits that the screen illustrated
17 by Figure 2 has appeared at certain times during Big Fish Casino gameplay. Except as expressly
18 stated, CDI denies the remaining allegations in Paragraph 28.

19 29. CDI denies the allegations in Paragraph 29.

20 30. In response to the allegations in Paragraph 30, CDI admits that Big Fish Casino
21 users may use virtual chips to play Big Fish Casino games, and that the screen illustrated by Figure
22 3 has appeared and may appear at certain times during Big Fish Casino gameplay. Except as
23 expressly stated, CDI denies the remaining allegations in Paragraph 30.

24 31. In response to the allegations in Paragraph 31 that purport to interpret Figure 3, CDI
25 states that Figure 3 speaks for itself. CDI is without sufficient knowledge or information to form a
26 belief as to the truth of the remaining allegations in Paragraph 31 and, therefore, denies those
27 allegations.

32. In response to the allegations in Paragraph 32, CDI admits that the operation of certain aspects of some of the Big Fish Casino games is driven by algorithms. Except as expressly stated, CDI denies the remaining allegations in Paragraph 32.

33. In response to the allegations in Paragraph 33 that purport to interpret Figure 4, CDI states that Figure 4 speaks for itself. CDI is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 33 and, therefore, denies those allegations.

34. In response to the allegations in Paragraph 34, CDI admits that the operation of certain aspects of some of the Big Fish Casino games is driven by algorithms and that Big Fish Casino maintains certain records related to gameplay. Except as expressly stated, CDI denies the remaining allegations in Paragraph 34.

35. In response to the allegations in Paragraph 35 and its accompanying footnotes that purport to interpret Figure 6, CDI states that Figure 6 speaks for itself. Except as expressly stated, CDI denies the allegations in Paragraph 35 and its accompanying footnotes.

36. In response to the allegations in Paragraph 36, CDI admits that Plaintiff purports to bring claims on behalf of herself and a putative class. Except as expressly admitted, CDI denies the allegations in Paragraph 36.

37. CDI is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 37 and, therefore, denies those allegations.

38. CDI is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 38 and, therefore, denies those allegations.

39. In response to the allegations in Paragraph 39, CDI admits that Plaintiff purports to bring this suit on behalf of herself and other unnamed individuals who purchased virtual chips on the Big Fish Casino platform. Except as expressly stated, CDI denies the remaining allegations in Paragraph 39.

40. Paragraph 40 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI denies the allegations in Paragraph

40.

41. Paragraph 41 and each of its subparts contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI denies the allegations in Paragraph 41 and each of its subparts.

42. Paragraph 42 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI denies the allegations in Paragraph 42.

43. Paragraph 43 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI denies the allegations in Paragraph 43.

44. Paragraph 44 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI denies the allegations in Paragraph 44.

45. Paragraph 45 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI denies the allegations in Paragraph 45.

46. In response to the allegations in Paragraph 46, CDI admits that Plaintiff purports to reserve certain rights. Except as expressly stated, CDI denies the allegations in Paragraph 46.

47. In response to Paragraph 47, CDI affirmatively incorporates its foregoing responses to Paragraphs 1-46.

48. Paragraph 48 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI denies the allegations in Paragraph 48 as they relate to CDI. CDI is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 48 as they relate to Plaintiff and, therefore, denies those allegations.

49. Paragraph 49 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI states that the text of RCW

1 4.24.070 speaks for itself. Except as expressly stated, CDI denies the remaining allegations in
2 Paragraph 49.

3 50. Paragraph 50 contains legal conclusions and not allegations of fact, and therefore no
4 response is required. To the extent a response is required, CDI states that the text of RCW
5 9.46.0237 speaks for itself. Except as expressly stated, CDI denies the remaining allegations in
6 Paragraph 50.

7 51. Paragraph 51 contains legal conclusions and not allegations of fact, and therefore no
8 response is required. To the extent a response is required, CDI states that the text of RCW
9 9.46.0241 speaks for itself. Except as expressly stated, CDI denies the remaining allegations in
10 Paragraph 51.

11 52. Paragraph 52 contains legal conclusions and not allegations of fact, and therefore no
12 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
13 52.

14 53. Paragraph 53 contains legal conclusions and not allegations of fact, and therefore no
15 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
16 53.

17 54. Paragraph 54 and each of its subparts contains legal conclusions and not allegations
18 of fact, and therefore no response is required. To the extent a response is required, CDI states that
19 the text of the statute speaks for itself. Except as expressly stated, CDI denies the remaining
20 allegations in Paragraph 54 and each of its subparts.

21 55. Paragraph 55 contains legal conclusions and not allegations of fact, and therefore no
22 response is required. To the extent a response is required, CDI states that the text of RCW
23 9.46.0285 speaks for itself. Except as expressly stated, CDI denies the remaining allegations in
24 Paragraph 55.

25 56. Paragraph 56 contains legal conclusions and not allegations of fact, and therefore no
26 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
27 56.

57. Paragraph 57 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI states that the text of RCW 9.46.0225 speaks for itself. Except as expressly stated, CDI denies the remaining allegations in Paragraph 57.

58. Paragraph 58 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI states that the text of RCW 9.46.0201 speaks for itself. Except as expressly stated, CDI denies the remaining allegations in Paragraph 58.

59. CDI denies that Plaintiff was harmed as a result of any alleged conduct by CDI, denies that any claims alleged in the Complaint may be brought on behalf of the putative class, denies that Plaintiff is entitled to any relief from CDI, and denies the remaining allegations in Paragraph 59.

60. In response to Paragraph 60, CDI affirmatively incorporates its foregoing responses to Paragraphs 1-59.

61. Paragraph 61 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI states that the text of the Washington Consumer Protection Act speaks for itself. Except as expressly stated, CDI denies the allegations in Paragraph 61.

62. Paragraph 62 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI states that the text of the Washington Consumer Protection Act speaks for itself. Except as expressly stated, CDI denies the allegations in Paragraph 62.

63. Paragraph 63 contains legal conclusions and not allegations of fact, and therefore no response is required. To the extent a response is required, CDI states that the text of the Washington Consumer Protection Act speaks for itself. Except as expressly stated, CDI denies the allegations in Paragraph 63.

64. Paragraph 64 contains legal conclusions and not allegations of fact, and therefore no

1 response is required. To the extent a response is required, CDI states that the text of the
2 Washington Consumer Protection Act speaks for itself. Except as expressly stated, CDI denies the
3 allegations in Paragraph 64.

4 65. Paragraph 65 contains legal conclusions and not allegations of fact, and therefore no
5 response is required. To the extent a response is required, CDI states that the text of the
6 Washington Consumer Protection Act speaks for itself. Except as expressly stated, CDI denies the
7 allegations in Paragraph 65.

8 66. Paragraph 66 contains legal conclusions and not allegations of fact, and therefore no
9 response is required. To the extent a response is required, CDI admits that it has at all times acted
10 in accordance with applicable law. CDI denies the remaining allegations in Paragraph 66.

11 67. Paragraph 67 contains legal conclusions and not allegations of fact, and therefore no
12 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
13 67.

14 68. Paragraph 68 contains legal conclusions and not allegations of fact, and therefore no
15 response is required. To the extent a response is required, CDI admits that Big Fish Casino has
16 been advertised in the United States. Except as expressly stated, CDI denies the allegations in
17 Paragraph 68.

18 69. CDI denies the allegations in Paragraph 69.

19 70. In response to the allegations in Paragraph 70, CDI admits that Big Fish Games,
20 Inc.'s principal place of business is located in Washington and that Plaintiff and each member of
21 the putative class agreed to the Big Fish Casino Terms of Use, including the mandatory arbitration
22 provision therein. Except as expressly stated, CDI denies the remaining allegations in Paragraph
23 70.

24 71. Paragraph 71 contains legal conclusions and not allegations of fact, and therefore no
25 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
26 71.

27 72. Paragraph 72 contains legal conclusions and not allegations of fact, and therefore no

1 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
2 72.

3 73. In response to the allegations in Paragraph 73, CDI admits that Plaintiff purports to
4 seek injunctive and monetary relief on her own behalf and on behalf of unnamed and as-yet-
5 unascertained individuals in this action. Except as expressly stated, CDI denies the remaining
6 allegations in Paragraph 73.

7 74. In response to Paragraph 74, CDI affirmatively incorporates its foregoing responses
8 to Paragraphs 1-73.

9 75. Paragraph 75 contains legal conclusions and not allegations of fact, and therefore no
10 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
11 75.

12 76. Paragraph 76 contains legal conclusions and not allegations of fact, and therefore no
13 response is required. To the extent a response is required, CDI states that the Big Fish Casino
14 Terms of Use speak for themselves and prohibit unlawful activity. Except as expressly stated, CDI
15 denies the remaining allegations in Paragraph 76.

16 77. Paragraph 77 contains legal conclusions and not allegations of fact, and therefore no
17 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
18 77.

19 78. Paragraph 78 contains legal conclusions and not allegations of fact, and therefore no
20 response is required. To the extent a response is required, CDI denies the allegations in Paragraph
21 78.

22 79. In response to the allegations in Paragraph 79, CDI admits that Plaintiff purports to
23 seek restitution on her own behalf and on behalf of unnamed and as-yet-unascertained individuals
24 in this action. Except as expressly admitted, CDI denies the remaining allegations in Paragraph
25 79.

26 80. In response to Plaintiff's prayer for relief, CDI denies that the alleged putative class
27 can be certified, denies that CDI has violated any law, denies Plaintiff is entitled to preliminary or

1 permanent injunctive relief against CDI, denies Plaintiff is entitled to entry of judgment against
2 CDI, denies Plaintiff is entitled to an award of damages (statutory, actual, punitive, or otherwise)
3 against CDI, denies Plaintiff is entitled to an award of restitution or disgorgement of profits, denies
4 Plaintiff is entitled to recover costs, interest, or attorneys' fees from CDI, and denies Plaintiff is
5 entitled to any relief whatsoever from CDI.

6 **SEPARATE AND AFFIRMATIVE DEFENSES**

7 CDI asserts the following defenses to Plaintiff's alleged causes of action. Insofar as any of
8 the following expresses denial of an element of any claim alleged against CDI, such expression
9 does not indicate that Plaintiff is relieved of her burden to prove each and every element of any
10 such claim.

11 **FIRST DEFENSE**

12 **(Failure to State a Claim)**

13 The Complaint, and each cause of action alleged therein, fails to set forth facts sufficient to
14 state a claim upon which relief may be granted against CDI and further fails to state facts sufficient
15 to entitle Plaintiff or any members of the putative class to the relief sought or to any other relief
16 whatsoever from CDI.

17 **SECOND DEFENSE**

18 **(Failure to Mitigate)**

19 Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate damages,
20 if any. Similarly, members of the putative class that Plaintiff seeks to represent failed to mitigate
21 their claimed damages, if any.

22 **THIRD DEFENSE**

23 **(Waiver/Estoppel/Laches)**

24 Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the
25 putative class, are barred, in whole or in part, by the doctrines of waiver, estoppel, unclean hands,
26 and laches.

FOURTH DEFENSE**(Statute of Limitations)**

Some or all of Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class, are barred by the applicable statutes of limitations.

FIFTH DEFENSE**(Arbitration)**

Absent members of the putative classes have a contractual obligation to arbitrate any claims they have arising out of or relating to Big Fish Casino.

SIXTH DEFENSE**(Washington Gambling Act)**

Plaintiff has not alleged and cannot establish the conditions precedent to asserting any claims arising out of or relating to Big Fish Casino under the Washington Gambling Act, whether on behalf of herself or on behalf of members of the putative class. CDI is entitled to each and every defense stated in the Washington Gambling Act and any and all limitations of liability.

SEVENTH DEFENSE**(Recovery of Money Lost at Gambling Act)**

Plaintiff has not alleged and cannot establish the conditions precedent to asserting any claims arising out of or relating to Big Fish Casino under Washington's Recovery of Money Lost at Gambling Act, whether on behalf of herself or on behalf of members of the putative class. CDI is entitled to each and every defense stated in the Recovery of Money Lost at Gambling Act and any and all limitations of liability.

EIGHTH DEFENSE**(Washington Consumer Protection Act)**

Plaintiff has not alleged and cannot establish the conditions precedent to asserting any claims arising out of or relating to Big Fish Casino under the Washington Consumer Protection Act, whether on behalf of herself or on behalf of members of the putative class. CDI is entitled to

each and every defense stated in the Washington Consumer Protection Act and any and all limitations of liability.

NINTH DEFENSE

(Consent, Notification, Ratification, Acquiescence, Authorization, Account Stated, and/or Acceptance)

Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class, are barred, in whole or in part, by the existence of consent, notification, ratification, acquiescence, authorization, and/or acceptance.

TENTH DEFENSE

(Voluntary Action)

Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class, are barred by the fact that the purchases about which Plaintiff complains were made voluntarily.

ELEVENTH DEFENSE

(Plaintiff's Comparative Fault and/or Assumption of Risk)

Plaintiff's claimed damages, if any, are in whole or in part due to conditions that preexisted or are unrelated to the claims alleged in the Complaint. The actions and/or omissions alleged in the Complaint were caused by Plaintiff's own actions, Plaintiff's fault, comparative fault and/or assumption of risk, which conduct will bar Plaintiff's claims or reduce her claim in an amount to be determined at the time of trial. Similarly, the alleged injuries of members of the putative class that Plaintiff seeks to represent were caused, in whole or in part, by their own actions.

TWELFTH DEFENSE

(No Punitive Damages)

Plaintiff's claim for punitive and/or trebled damages violates CDI's right to due process under the United States Constitution, and other applicable law.

THIRTEENTH DEFENSE**(Big Fish Games, Inc.'s Actions Not Imputed to CDI)**

Plaintiff improperly sued CDI over the purported actions of its wholly owned subsidiary, Big Fish Games, Inc. Plaintiff has not alleged and has no basis to pierce the corporate veil to hold CDI responsible for Big Fish Games, Inc.'s purported actions. In addition, CDI no longer owns Big Fish Games, Inc.

FOURTEENTH DEFENSE**(Acts or Omissions of Third Parties)**

All or part of the damages alleged in the Complaint, if they occurred, were caused by the acts and/or omissions of other persons or entities for whose conduct CDI is not legally responsible.

FIFTEENTH DEFENSE**(No Standing)**

Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class, are barred in whole or in part because Plaintiff and the putative class members lack standing to assert the alleged claims.

SIXTEENTH DEFENSE**(No Personal Jurisdiction Over Claims of Absent Class Members)**

The Court lacks personal jurisdiction over any claims asserted on behalf of absent members of the putative class.

CDI reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

PRAYER FOR RELIEF

CDI prays for entry of judgment in its favor and against Plaintiff as follows:

1. That the Complaint be dismissed in its entirety with prejudice;
2. That this action proceed between the named parties only, and that no class action be permitted under Fed. R. Civ. P. 23 and no class be certified under Fed. R. Civ. P. 23(c);

3. That Plaintiff takes nothing by way of the Complaint;
4. For attorneys' fees and costs as permitted by law; and
5. For such other and further relief as this Court deems just and proper.

JURY DEMAND

CDI requests a trial by jury on all issues raised by the Complaint that are properly triable to a jury.

Dated: November 16, 2018

Respectfully submitted,

/s/ Matthew R. Berry

Matthew R. Berry, WSBA #37364

mberry@susmangodfrey.com

Steven M. Seigel

sseigel@susmangodfrey.com

Susman Godfrey L.L.P.

1201 Third Avenue, Suite 3800

Seattle, WA 98101-3000

P: (206) 516-3880

Robert Rivera (*Pro Hac Vice Pending*)

rrivera@SusmanGodfrey.com

Susman Godfrey L.L.P.

1000 Louisiana Street, Ste. 5100

Houston, TX 77002-5096

P: (713) 653-7809

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the date below I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Dated this 16th day of November, 2018.

/s/ Matthew R. Berry